



Docket No.: 9988.058.00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
LEE, Soon Jo et al.

Customer No.: 30827

Application No.: 10/663,997

Confirmation No.: 1982

Filed: September 17, 2003

Art Unit: 3749

For: TOP COVER STRUCTURE FOR A CLOTHES
DRYER

Examiner: Stephen Michael Gravini

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANT'S BRIEF

Sir:

The Appellant hereby submits this Appeal Brief in response to a Final Rejection of all pending claims that was mailed on October 4, 2006 (hereinafter "*the final Office Action*"). A Notice of Appeal was filed January 3, 2007.

The fees required under § 1.17(f) and any required petition for extension of time for filing this brief and fees therefore are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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This brief contains items under the following headings as required by 37 C.F.R. §
41.37(c):

- I. Real Party In Interest**
- II. Related Appeals and Interferences**
- III. Status of Claims**
- IV. Status of Amendments**
- V. Summary of Claimed Subject Matter**
- VI. Grounds of Rejection to be Reviewed on Appeal**
- VII. Argument**
- VII. Conclusion**
- Claims Appendix**
- Evidence Appendix**
- Related Proceedings Appendix**

Application No.: 10/663,997
Group Art Unit 3749
Appellant's Brief filed June 3, 2007

Docket No.: 9988.058.00

I. REAL PARTY INTEREST

The real party in interest for this appeal is: LG Electronics Inc.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF CLAIMS

Total Number of Claims in the Application

There are 5 claims pending in this application.

Current Status of Claims:

Claims canceled: Claim 6.

Claims withdrawn from consideration but not canceled: None.

Claims pending: Claims 1- 5.

Claims allowed: None.

Claims rejected: Claims 1- 5.

Claims on Appeal: Claims 1-5.

IV. STATUS OF AMENDMENTS

The Examiner issued a Final Rejection on October 4, 2006. A Notice of Appeal was filed on January 3, 2007. No amendments were filed in response to the Final Rejection. Accordingly, claims 1-5 are currently pending and are reflected in Claims Appendix.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 is directed to a clothes dryer, as shown in Figures 3-5, comprising a base (1) forming a floor of a body (B), a front cabinet (2) forming a front portion of the body, a side cabinet (3) forming side portions of the body, a back cover (4) forming a back portion of the body, a control panel (6) having a hook (600), a top cover (5) forming a top of the body wherein the top cover has a predetermined curvature (page 7, paragraph [0022], lines 5-6), and wherein the control panel is provided on a rear portion of the top cover (page 7, paragraph [0022], lines 4-5), the top cover comprising a groove (510) provided at a rear portion of the top cover wherein the hook is disposed in a surface of the control panel opposite the top cover such that the hook inserts into a hole (530) disposed in the groove (page 7, paragraph [0022], lines 6-8), and a fire wall (8) made of metal disposed at a lower portion of the top cover (page 7, paragraph [0022], line 8), and the fire wall directing a fluid toward an outside of the body if fluid leaks through the hole (page 8, paragraph [0026], lines 3-6).

Independent claim 4 is directed to a laundry dryer, as shown in Figures 3-5, comprising a body (B), a top cover (5) covering the body, the top cover including a groove (510) which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer (page 8, paragraph [0025], lines 2-4), at least one hole (530) disposed in the groove, a control panel (6) including a hook (600) disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole, and a fire wall (8) disposed below the top cover, wherein the firewall has a curvature (page 7, paragraph [0023], lines 1-2) such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body (page 8, paragraph [0026], lines 1-4).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- (A) Whether the provisional rejection of claims 1-3 is proper under the judicially created doctrine of obviousness-type double patenting over claims 1-15 of co-pending Application Number 11/036,380 (hereinafter "*the '380 Application*").
- (B) Whether the provisional rejection of claims 4-5 is proper under the judicially created doctrine of obviousness-type double patenting over claims 1-31 of co-pending Application Number 10/920,292 (hereinafter "*the '292 Application*").
- (C) Whether the rejection of claims 1-3 is proper under 35 U.S.C. § 102 (b) as being clearly anticipated by U.S. Patent 3,816,942 to *Smith* (hereinafter "*Smith*").
- (D) Whether the rejection of claims 4 and 5 is proper under 35 U.S.C. § 102 (b) as being anticipated by U.S. Patent 3,034,226 to *Conlee* (hereinafter "*Conlee*").

VII. ARGUMENT

A. **Claims 1-3 are patentably distinguishable over claims 1-15 of *the '380 Application* under the judicially created doctrine of obviousness-type double patenting.**

In order to reject claims under the judicially created doctrine of obviousness-type double patenting, the allegedly conflicting claims are not required to be identical, but at least one claim in the examined application must be considered to be not patentably distinct from the claims of the reference. Simply put, the examined application claims must be considered to be either anticipated by, or obvious over, the reference claims. MPEP 804.

An anticipation analysis must include a determination whether claims 1-15 of *the '380 Application* either expressly or inherently describe each and every feature of the claimed invention, as required by *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (1987). If not, then an obvious analysis must be performed based on the factual inquiries required by *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Specifically, the Examiner must determine the scope and content of the claims of *the '380 Application*, ascertain and identify the differences between claims 1-15 of *the '380 Application* and claims 1-3 of the instant application and resolve the level of ordinary skill in the art. The Examiner must then use the information acquired during this analysis to establish a *prima facie* case of obviousness. To properly establish a *prima facie* case of obviousness, a suggestion or modification to modify the claims of the instant application in light of the claims of *the '380 Application* must be taught in the references themselves or such knowledge must be available to one of ordinary skill in the art and there must be a reasonable expectation that the modification would be successful.

For the convenience of the Board, independent claim 1 of the instant application and independent claims 1, 14 and 15 of *the '380 Application* are reproduced below.

U.S. App No. 10/663,997

Claim 1: A clothes dryer comprising:
a base forming a floor of a body;
a front cabinet forming a front portion of the body;
a side cabinet forming side portions of the body;
a back cover forming a back portion of the body;
a control panel having a hook;
a top cover forming a top of the body wherein the top cover has a predetermined curvature, and wherein the control panel is provided on a rear portion of the top cover, the top cover comprising a groove provided at a rear portion of the top cover wherein the hook is disposed in a surface of the control panel opposite the top cover such that the hook inserts into a hole disposed in the groove; and
a firewall made of metal disposed at a lower portion of the top cover, and the fire wall directing a fluid toward an outside of the body if fluid leaks through the hole.

U.S. App No. 11/036,380

Claim 1: A washing machine comprising:
a console including at least one hole and provided at a predetermined portion of the washing machine;
a control panel provided at a rear of the console for controlling and displaying operation states of the washing machine; and
a decoration panel including at least one protrusion provided at a rear surface of the decoration panel radiation and fixedly inserted into the hole of the console such that the decoration panel is coupled with a front surface of the console.

Claim 14: A washing machine comprising:
a console including at least one hole and at least one groove and disposed at a predetermined portion of the washing machine;
a control panel provided at a rear of the console, for controlling and displaying operation state of the washing machine;
at least one extending portion protruded backward to be inserted into the groove; and
a decoration panel having at least one protrusion provided at the extending portion such that an end of the protrusion is inserted into and fixed in the hole.

Claim 15: A method for manufacturing a washing machine, the method comprising the steps of:
inserting an upper fixing protrusion formed at a decoration panel into an upper fixing hole formed at a console, and rotating the decoration panel by a predetermined angle to load the decoration panel into an upper surface of the console;
inserting a protrusion formed at a rear surface of the decoration panel into a hole formed at the console;
bending and fixing an end of the protrusion inserted into the hole; and
assembling the console fixedly coupled with the decoration panel at a predetermined portion of the washing machine.

The Examiner fails to properly analyze how claims 1-3 of the instant application are rendered obvious over claims 1-15 of *the '380 Application*. Instead, the Examiner simply alleges that "it would have been obvious to one skilled in the art to use a claim recitation "fire wall" in place of the copending recitation of "decoration panel" since both perform substantially the same function in substantially the same way using substantially the same means." *See the final Office Action at page 3, lines 13-16*. This allegation is completely unfounded.

The claims of *the '380 Application* clearly set forth that the "decoration panel" performs the function of decoration in a washing machine. In contrast, claim 1 of the instant application clearly sets forth that the function of the "fire wall" is to direct "fluid toward an outside of the body if fluid leaks through the hole," where the hole is located in a groove formed in the top panel of a clothes dryer. These two functions are undeniably different, thus it follows that the "decoration panel" of *the '380 Application* and the "fire wall" of the instant application cannot possibly "perform substantially the same function in substantially the same way using substantially the same means," as alleged. Therefore, any motivation to modify claims 1-15 of *the '380 Application*, as suggested, is lacking.

Nevertheless, even if, assuming *arguendo*, the Examiner's allegations had any merit and one of ordinary skill modified claims 1-15 of *the '380 Application*, as suggested, the modification cannot possibly render claims 1-3 of the instant invention obvious because the modification fails to teach or suggest at least each and every feature required by independent claim 1 of the instant application. For example, *the '380 Application* fails to claim "a control panel having a hook," a top cover having "a predetermined curvature," and "a fire wall made of metal." Accordingly, the Examiner has failed to properly establish a *prima facie* case of

obviousness to support the allegation by simply ignoring the fact that *the '380 Application* fails to teach or suggest these limitations.

The modification of claims 1-15 of *the '380 Application* undoubtedly fails to teach or suggest each and every feature claimed in independent claim 1 and likewise claims 2 and 3 which depend from claim 1. Therefore, the rejection of claims 1-3 of the instant application under the judicially created doctrine of obviousness-type double patenting over claims 1-15 of *the '380 Application* is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding of obviousness-type double patenting.

B. Claims 4 and 5 are patentably distinguishable over claims 1-31 of the '292 Application under the judicially created doctrine of obviousness-type double patenting.

At the outset, it appears the Examiner has relied upon claims of *the '292 Application* that include the feature of "drain system." It is noted that the only claim that includes this feature is independent claim 20. Accordingly, for the purpose of brevity, Appellant will directly address the double patenting rejection of claims 4 and 5 over claims 20-24 of *the '292 Application*. With regard to the rejection of claims 4 and 5 over claims 1-19 and 25-31 of *the '292 Application*, since these claims omit one of the key features the Examiner relies upon for basis for the double patenting rejection, these claims clearly cannot teach or suggest every feature recited in claims 4 and 5 of the instant application. Therefore, the rejection of claims 1-3 of the instant application under the judicially created doctrine of obviousness-type double patenting over claims 1-19 and 25-31 of *the '292 Application* is clearly improper.

For the convenience of the Board, independent claim 4 of the instant application and independent claim 20 of *the '292 Application* are reproduced below.

U.S. App No 10/663,997

Claim 4: A laundry dryer comprising:

- a body;
- a top cover covering the body, the top cover including:
 - a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer;
 - at least one hole disposed in the groove;
 - a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and
 - a fire wall disposed below the top cover; wherein the firewall has a curvature such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.

U.S. App No. 10/920,292

Claim 20: A washing machine comprising:

- an outer case comprising:
 - a front cover forming a front side of the case and having at least one second aperture formed on a topside of the front cover; and
 - a front panel provided above the front cover and in rear of a front side of the front cover and having at least one first aperture;
- a control panel comprising:
 - a first fixing part caught on an upper part of the front panel; and
 - a second fixing part sliding along a topside of the front cover to be fitted thereon while the first fixing part is caught on the upper part of the front panel;
- a drum rotatably provided within the outer case;
- a water supply system for supplying water to the drum; and
- a drain system draining the water within the tub.

The Examiner fails to properly analyze how claims 4 and 5 of the instant application are rendered obvious over claims 1-31 of *the '292 Application*. Instead the Examiner simply alleges that "it would have been obvious to one skilled in the art to use a claim recitation "fire wall" in place of the copending recitation of "drain system" since both perform substantially the same function in substantially the same way using substantially the same means." *See the final Office Action at page 3, line 17- page 4, line 2.* This allegation is completely unfounded.

The claims of *the '292 Application* clearly set forth that the function of the “drain system” is to drain the water within the drum of the washing machine. In contrast, claim 4 of the instant application clearly sets forth that the function of the “firewall” is to direct fluid toward the outside of the body of a laundry dryer. These two functions are undeniably different thus it follows that the “drain system” of *the '292 Application* and the “firewall” of the instant application cannot possibly “perform substantially the same function in substantially the same way using substantially the same means,” as alleged. Therefore, any motivation to modify claims 1-31 of *the '292 Application*, as suggested, is lacking.

Nevertheless, even if, assuming *arguendo*, the Examiner's allegations had any merit and one of ordinary skill modified claims 1-31 of *the '292 Application*, as suggested, the modification cannot possibly render claims 4 and 5 of the instant application obvious because the modification fails to teach or suggest each and every feature required by independent claim 4. For example, *the '292 Application* fails to claim a top cover “including a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer,” “at least one hole disposed in the groove,” and “a fire wall disposed below the top cover; wherein the firewall has a curvature.” Accordingly, the Examiner has failed to properly establish a *prima facie* case of obviousness to support the allegation by simply ignoring the fact that *the '292 Application* fails to teach or suggest these limitations.

Clearly, the Examiner has failed to properly establish a *prima facie* case of obviousness by simply ignoring the fact that claims 1-31 of *the '292 Application* fail to teach or suggest each and every feature recited in independent claim 4 and likewise dependent claim 5. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding of obviousness-type double patenting.

C. Independent claim 1, and claims 2 and 3, which depend therefrom, are NOT clearly anticipated by *Smith* under 35 U.S.C. §102(b).

In order for a claim to be anticipated by a single prior art reference under 35 U.S.C. §102(b), each and every element, as set forth in the claim, must be either expressly or inherently described in the reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

I. *Smith* does NOT anticipate independent claim 1.

Independent claim 1 recites a clothes dryer which includes, among other features, a “top cover comprising a groove provided at a rear portion of the top cover wherein... the hook [of the control panel] inserts into a hole disposed in the groove; and a fire wall directing a fluid toward an outside of the body if fluid leaks through the hole.”

In rejecting independent claim 1, the Examiner alleges that *Smith* clearly anticipates each and every feature of claim 1, however provides no designation of the particular part of *Smith* that is considered to anticipate claim 1. *See the final Office Action at page 2.*

In response to the previous traversal and in an attempt to support the anticipation rejection of claim 1, the Examiner alleges that *Smith* discloses “a top cover **20** comprising a groove **40** provided at a rear portion of the top cover wherein a hook **50** is disposed in a surface of the control panel opposite the top cover such that the hook inserts into a hole disposed in the groove.” *See the final Office Action at page 4.* The Examiner further alleges that *Smith* discloses “a fire wall **44** or **45** directing a fluid toward an outside of the body if fluid leaks through a hole.”

The above interpretation of *Smith* is simply wrong. The Examiner has grossly misconstrued the disclosure of *Smith* in an attempt to support the unfounded allegation of anticipation.

As required by M.P.E.P. 2111.01, during examination, claims must be interpreted as broadly as their terms reasonably allow in light of the specification and claim terms must be given their plain and ordinary meaning unless the plain and ordinary meaning is inconsistent with the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989).

With this in mind, the Examiner argues that reference number **40** anticipates “a groove provided at a rear portion of the top cover.” Webster’s II New College Dictionary, Houghton Mifflin Company, Copyright 2005, defines “groove” as “a long ,narrow furrow or channel.” This definition is consistent with the intrinsic record, see, for example, reference number 510 in Figure 5. Reference number **40** of *Smith* is an end wall of the cylindrical peripheral sidewall **36** of the fabric tumbler **41**. See *Figure 2 and column 2, line 36-38*. An end wall is not a groove. Clearly, the Examiner has improperly defined the term “groove” contrary to the plain and ordinary meaning of the word in an attempt to support the allegation that *Smith* anticipates independent claim 1. Thus, *Smith* clearly fails to anticipate each and every feature of independent claim 1

Nevertheless, even if, assuming *arguendo*, the Examiner’s allegations had any merit and one of ordinary skill construed “groove” as suggested, *Smith* still fails to teach or suggest a “top cover comprising a groove provided at a rear portion of the top cover.” As stated above, *Smith* discloses that end wall **40** is part of the fabric tumbler **41**. In other words, the end wall is a portion of the drum in which laundry is placed in the dryer of *Smith*, where the drum rotates within the cabinet. The top cover **20** is a stationary portion of the cabinet that houses the drum

that is separate and distinct from the fabric tumbler **41**. Thus, the end wall **40** cannot possibly be construed as “a groove provided at a rear portion of the top cover,” where the top cover comprises the groove. It is obvious that Examiner has conveniently ignored the actual disclosure of *Smith* in an attempt to support an anticipation allegation. Further, one of ordinary skill would never construe top cover **20** to comprise end wall **40**, as alleged by the Examiner. Therefore, *Smith* clearly fails to teach or suggest each and every feature claimed in claim 1.

The Examiner continues to allege that *Smith* anticipates claim 1 by suggesting that reference number **50** can be construed as a “hook” of a “control panel” that corresponds to a hole disposed in the above alleged “groove.” Webster’s II New College Dictionary defines “hook” as “a curved or sharply bent, usually metal device used to catch, drag, suspend, attach, or close something.” This definition is consistent with the intrinsic record, see, for example, reference number 600 in Figure 4. Reference number **50** relied upon by the Examiner to anticipate a “hook” is not a hook at all, nor is it a hook that is “disposed in a surface of the control panel.” Reference number **50** is actually a bulk head seal made of a felt strip that acts as a seal between the sidewall **36** of the fabric tumbler **41** and the bulkhead **34**. *See column 3, lines 55-57 and column 3, line 66*. This felt strip is not even remotely located near the only element of *Smith* that could possibly be construed as a control panel, i.e. the upwardly extended housing **21** of the top cover **20** that accommodates the controls of the dryer. *See column 2, lines 10-12*. Thus, even if the felt strip could somehow be construed as a “hook,” this felt strip could not possibly be considered to be “disposed in a surface of the control panel” as recited in the claim. Again, the Examiner has clearly disregarded the plain and ordinary meaning of the term “hook” and the disclosure of *Smith*. If the Examiner had actually considered either one of these, it would have been apparent that *Smith* fails to anticipate the claimed feature of a hook “disposed in a surface

of the control panel.” Moreover, since *Smith* fails to teach or suggest both a hook and a groove, *Smith* cannot possibly be relied upon to teach the claim feature of “the hook [of the control panel] inserts into a hole disposed in the groove.”

Moreover, the Examiner alleges that the elements corresponding to reference numbers **44** or **45** of *Smith* anticipate “a fire wall directing a fluid toward an outside of the body if fluid leaks through the hole.” As discussed above, *Smith* cannot possibly be considered to teach “a groove,” as recited in the claim. Therefore, *Smith* cannot possibly anticipate a hole in a groove. *Smith* discloses that reference numbers **44** and **45** are recesses formed in the bulk head **34** to receive the cylindrical peripheral sidewall **36** and bulkhead seals **49** and **50**. *See column 3, lines 51-53*. These recesses are not firewalls nor can they possibly be construed to direct “fluid toward an outside of the body.” In fact, *Smith* does not even contemplate the situation in which “fluid leaks through a hole in a groove in a top cover,” as recited in the claim. Since *Smith* does not even contemplate this feature, *Smith* cannot possibly anticipate this feature.

For at least any or all of the abovementioned reasons, *Smith* undoubtedly fails to teach or suggest each and every feature claimed in claim 1 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Smith* anticipates independent claim 1.

II. *Smith* does NOT anticipate dependent claim 2.

In addition to the above requirements necessary to anticipate a claim under 35 U.S.C. §102(b), 37 C.F.R. 1.104 requires that when a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be

designated. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.

Independent claim 1 recites a clothes dryer which includes, among other features, "a top cover forming a top of the body wherein the top cover has a predetermined curvature."

Dependent claim 2 further recites that "the firewall has the same predetermined curvature."

In rejecting claims 1 and 2, the Examiner alleges that *Smith* clearly anticipates each and every feature of claims 1 and 2, however provides no designation of the particular part of *Smith* that is considered to anticipate either of the above features. *See page 2, lines 15-16 of the final Office Action.*

The Examiner provides no further support for the "clearly anticipated" rejection of claim 2. *Smith* clearly discloses an invention other than that claimed by the applicant, therefore the Examiner is required under 37 C.F.R. 1.104 to identify the particular part of *Smith* relied on to disclose the claimed invention and clearly explain the pertinence of each reference. Thus, the rejection is improper because the Examiner has failed to meet the requirements of 37 C.F.R. 1.104. Therefore, the finality of *the final Office Action* should be withdrawn and a new Office Issued properly indicating the required designations of *Smith* considered to anticipate the claimed invention.

Nevertheless, the Appellant has thoroughly analyzed the entire disclosure of *Smith* and has found nothing in *Smith* that could be construed as "a top cover forming a top of the body wherein the top cover has a predetermined curvature" or a firewall wherein "the firewall has the same predetermined curvature." Examiner has clearly ignored these limitations.

In fact, not only does *Smith* not disclose a top cover having a predetermined curvature, *Smith* actually discloses just the opposite. Webster's II New College Dictionary defines "curvature" as "the act of curving or state of being curved." Webster's II New College Dictionary further defines "curving" as "a surface deviating from planarity in a smooth, continuous way." These definitions are consistent with the intrinsic record, see, for example, Figure 4. *Smith* clearly discloses that the top cover 20 has only planar and angular surfaces. See Figure 1. Therefore, *Smith* cannot possibly disclose a top cover having a predetermined curvature, as recited in claim 1. Furthermore, since *Smith* fails to disclose both a firewall and a top cover having a predetermined curvature, *Smith* cannot be considered to disclose a firewall having "the same predetermined curvature." Therefore, for at least the aforementioned reasons, claim 1 and likewise claim 2, which depends from claim 1, are patentably distinguishable over *Smith* and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Smith* anticipates independent claim 1 and dependent claim 2.

III. *Smith* does NOT anticipate dependent claim 3.

Independent claim 1 recites a clothes dryer which includes, among other features, "a top cover forming a top of the body wherein the top cover has a predetermined curvature." Claim 3, which depends from claim 1, further recites that "the groove has the same predetermined curvature."

Again, in rejecting claims 1 and 3, the Examiner alleges that *Smith* clearly anticipates each and every feature of claims 1 and 3, however provides no designation of the particular part

of *Smith* that is considered to anticipate either of the above features, as required by 37 C.F.R.

1.104. See page 2, lines 15-16 of the final Office Action. Therefore, the rejection is improper because the Examiner has failed to meet the requirements of 37 C.F.R. *1.104*. Accordingly, the finality of *the final Office Action* should be withdrawn and a new Office Issued properly indicating the required designations of *Smith* considered to anticipate the claimed invention.

Nevertheless, the Appellant has thoroughly analyzed the entire disclosure of *Smith* and has found nothing that could be construed as “a top cover forming a top of the body wherein the top cover has a predetermined curvature” or a groove wherein “the groove has the same predetermined curvature.” Furthermore, as stated above, the element relied on by the Examiner to anticipate a “groove” is neither a groove nor a groove comprised in a top cover. Since *Smith* does not disclose a top cover having a predetermined curvature or a groove, *Smith* cannot be considered to disclose a groove having “the same predetermined curvature,” as claimed in claim 3. Therefore, for at least the aforementioned reasons, claim 1 and likewise claim 3, which depends from claim 1, are patentably distinguishable over *Smith* and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner’s finding that *Smith* anticipates independent claims 1 and dependent claim 3.

D. Independent claim 4, and claim 5, which depends therefrom, are NOT anticipated by *Conlee* under 35 U.S.C. §102(b).

I. *Conlee* does NOT anticipate independent claim 4.

Independent claim 4 recites a laundry dryer, which includes, among other features, “a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer; at least one hole disposed in the groove; a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and a fire wall disposed below the top cover; wherein the fire wall has a curvature such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.”

The Examiner alleges that *Conlee* discloses “a body **81**; a top cover **7**’ covering the body, the top cover including: a groove **104** which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer; at least one hole **93** disposed in the groove; a control panel **40**’ including a hook **107** disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and a fire wall **103** disposed below the top cover; wherein the firewall has a curvature such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.” In an attempt to support the anticipation rejection of claim 4, the Examiner further alleges that *Conlee* discloses “a hole **93** at column 5 beginning on line 15 as an opening formed in the casing cover,” where this “hole or opening is reasonably and broadly construed from the specification to be disposed in the peripheral rim or groove **104**.” *See page 5, lines 3-7 of the final Office Action.*

The above interpretation of *Conlee* is simply erroneous. The Examiner has misconstrued the disclosure of *Conlee* in an attempt to support the unfounded allegation of anticipation.

As required by MPEP 2106, when the scope of a claim is evaluated, the claim must be considered as a whole. Every limitation in the claim must be considered; the Examiner cannot

dissect the claimed invention into discrete elements and then evaluate these elements in isolation.

Diamond v. Diehr, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981).

With this in mind, the Examiner has clearly dissected claim 4 into discrete elements and has improperly ignored the scope of the claim as a whole. Specifically, the Examiner relies on reference number **104** to anticipate “a groove” however fails to specifically point out or explain how this groove is construed to “run along a width of the top cover.” *Conlee* discloses a peripheral rim **104** formed in a lower portion of a conduit **94** that is connected with a drying drum wherein a gasket **105** sits in the peripheral rim **104**. See *Figure 8 and column 5, lines 33-35 and 40-42*. *Conlee* further discloses that top cover **7'** is “is pivotally attached at one end to the casing 1 by a pair of offset hinges,” and when the cover is pivoted, the cover **7'** separates from the lower portion of the conduit. See *Figure 8 and column 2, lines 64-67*. Thus, even if peripheral rim **104** could be construed as a groove, as alleged, conduit **94** is clearly not in cover **7'**, as required by the claim. Therefore, *Conlee* cannot possibly be considered to anticipate “a groove which runs along a width of the top cover,” as recited in claim 4.

Nevertheless, even if, assuming arguendo, the Examiner's allegations had any merit and one of ordinary skill construed the peripheral rim **104** to run “along a width of the top cover,” as suggested, *Conlee* still fails to disclose that “the groove directs fluid on the top cover toward an exterior of the laundry dryer.” In fact, *Conlee* does not even speculate a situation where fluid is present on the top cover **7'**. Moreover, *Conlee* discloses that when the cover **7'** is closed, gasket **105** comprised in the lower conduit **94** produces a fluid-tight seal between the lower conduit **94** and the upper conduit portion **96**. See *Figure 7, column 5, lines 38-42*. Therefore, at best, when lower conduit **94** and upper conduit **96** are in “fluid-tight” communication, the conduit may direct moist air from within the drum to outside the dryer, but since the peripheral rim **104**

clearly does not come in contact with any of the directed air, the peripheral rim **104** cannot possibly be considered to direct "fluid on the top cover toward an exterior of the laundry dryer," as alleged.

Furthermore, the Examiner alleges that reference number **93** is considered to be "a hole disposed in the groove." For all of the aforementioned reasons, the Appellant reiterates that *Conlee* fails to disclose "a groove" as recited in the claim. Nevertheless, even if, assuming *arguendo*, all of the above allegations had any merit and one of ordinary skill construed *Conlee* as alleged, the Appellant contends that the Examiner continues to misconstrue the disclosure of *Conlee*, specifically with regard to the recitation of "a hole disposed in the groove."

Conlee discloses that reference number **93** is an opening formed in cover **7** wherein the upper conduit **96** surrounds the opening. *See Figure 7, column 5, lines 15-23*. Therefore, even if opening **93** could be construed as a hole, it could not possibly be construed as being "disposed in" the peripheral rim **104**, as suggested.

Moreover, the Examiner relies on reference number **40'** to anticipate "a control panel" and reference number **107** to anticipate "a hook disposed at a surface of the control panel." *Conlee* discloses that reference number **40'** is a control housing in cover **7** and that reference number **107** is a lip portion of the upper conduit **96**. Even if control housing **40'** could be construed as a control panel, lip portion **107** is not a hook. Again, the Examiner has clearly ignored the plain and ordinary meaning of hook. Furthermore, the control housing **40'** does not comprise the lip portion **107** such that the lip portion is "disposed at a surface" of the control housing, as required by the claim. In fact, *Conlee* discloses that the bottom wall **45** of the control housing **40** "rests upon" an upwardly extending embossing **47** formed in the cover **7**, wherein lip portion **107** is formed in the extended embossing **47**. *See Figure 3 and column 3, lines 46-49*. In

light of this disclosure, *Conlee* clearly discloses that the cover 7' includes the lip portion 107, not the control housing 40', as alleged. Moreover, since *Conlee* fails to disclose "a control panel," "a hook," "a groove," and "a hole," as recited in the claim, *Conlee* cannot possibly be considered to anticipate that "the hook is configured for insertion into the at least one hole [in the groove in the top cover]."

Finally, the Examiner relies upon reference number 103 to anticipate "a fire wall." *Conlee* discloses that reference number 103 is an outlet vent of the impeller housing 97, wherein the lower conduit 94 includes the impeller housing 97. One of ordinary skill would never construe outlet vent 103, broadly or other wise, as "a fire wall."

Nevertheless, even if, assuming *arguendo*, the Examiner's allegations had any merit and one of ordinary skill construed outlet vent 103 as "a firewall," *Conlee* fails to teach that the outlet vent has "a curvature," as required by the claim. If the Examiner had properly considered the plain and ordinary meaning of "curvature," it would have been apparent that the outlet vent 103 of *Conlee* fails to have any curvature. Moreover, the Appellant reiterates that *Conlee* fails to disclose "a groove" or "a hole," as required by the claim. Therefore, *Conlee* cannot possibly disclose a fire wall that "has a curvature such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body," as recited in claim 4.

For at least any or all of the aforementioned reasons, *Conlee* fails to teach or suggest each and every feature claimed in claim 4 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Conlee* anticipates independent claim 4.

II. *Conlee* does NOT anticipate dependent claim 5.

Independent claim 4, the claim from which claim 5 depends, recites a laundry dryer, which includes among other features, "a top cover." Claim 5 recites that "the top cover has a curvature."

In rejecting dependent claim 5, the Examiner alleges that Figures 2, 7 and 8 are "considered to disclose the claimed top cover curvature." *See page 2, line 17- page 3, line 8 of the final Office Action.*

The above interpretation of *Conlee* is simply wrong. The Examiner has misconstrued the disclosure of *Conlee* in an attempt to support the unfounded allegation of anticipation.

If the Examiner had properly considered the plain and ordinary meaning of "curvature," it would have been apparent that cover 7 of *Conlee* fails to have any curvature. In fact, *Conlee* discloses just the opposite. Figures 2, 7 and 8 clearly show that cover 7 is planar. Therefore, *Conlee* fails to teach or suggest each and every feature claimed in claim 5 and thus the rejection under 35 U.S.C. §102(b) is improper. Accordingly, the Appellant respectfully requests that the Board set aside the Examiner's finding that *Conlee* anticipates dependent claim 5.

VIII. CONCLUSION

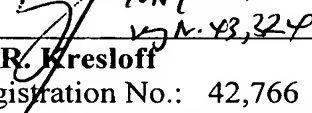
For reasons as discussed above, claims 1-3 are improperly rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-15 of the '380 Application. Claims 4 and 5 are improperly rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-31 of the '292 Application. Claims 1-3 are improperly rejected under 35 U.S.C. §102(b) as being anticipated by *Smith* and claims 4 and 5 are improperly rejected under 35 U.S.C. §102(b) as being anticipated by *Conlee*.

This Honorable Board is respectfully requested to reverse the rejections set forth in the final Office Action and direct the Examiner to pass this application to issue.

If these papers are not considered timely filed by the Patent and Trademark Office, then a petition is hereby made under 37 C.F.R. §1.136, and any additional fees required under 37 C.F.R. §1.136 for any necessary extension of time, or any other fees required to complete the filing of this response, may be charged to Deposit Account No. 50-0911. Please credit any overpayment to deposit Account No. 50-0911. A duplicate copy of this sheet is enclosed.

Dated: July 3, 2007

Respectfully submitted,

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Attachments

CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/663,997

1. A clothes dryer comprising:
 - a base forming a floor of a body;
 - a front cabinet forming a front portion of the body;
 - a side cabinet forming side portions of the body;
 - a back cover forming a back portion of the body;
 - a control panel having a hook;
 - a top cover forming a top of the body wherein the top cover has a predetermined curvature, and wherein the control panel is provided on a rear portion of the top cover, the top cover comprising a groove provided at a rear portion of the top cover wherein the hook is disposed in a surface of the control panel opposite the top cover such that the hook inserts into a hole disposed in the groove; and
 - a fire wall made of metal disposed at a lower portion of the top cover, and the fire wall directing a fluid toward an outside of the body if fluid leaks through the hole.
2. The clothes dryer of claim 1, wherein the firewall has the same predetermined curvature.
3. The clothes dryer of claim 1, wherein the groove is provided in left and right directions along a rear side of the top cover and the groove has the same predetermined curvature.
4. A laundry dryer comprising:
 - a body;
 - a top cover covering the body, the top cover including:

a groove which runs along a width of the top cover wherein the groove directs fluid on the top cover toward an exterior of the laundry dryer;

at least one hole disposed in the groove;

a control panel including a hook disposed at a surface of the control panel opposite the top cover wherein the hook is configured for insertion into the at least one hole; and

a fire wall disposed below the top cover; wherein the firewall has a curvature such that if a fluid leaks through the hole onto the firewall, the fluid is directed toward an outside of the body.

5. The laundry dryer of claim 4, wherein the top cover has a curvature.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.